

TERRY PEACH 4/10/2009

1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 W. A. DREW EDMONDSON, in)
 4 his capacity as ATTORNEY)
 GENERAL OF THE STATE OF)
 OKLAHOMA and OKLAHOMA)
 5 SECRETARY OF THE ENVIRONMENT)
 C. MILES TOLBERT in his)
 6 capacity as the TRUSTEE FOR)
 NATURAL RESOURCES FOR THE)
 7 STATE OF OKLAHOMA,)

8 Plaintiff,)
)

9 vs.)

No. 05-CV-00329-GKF-PJC

10 TYSON FOODS, INC, et al.,)
)
 11 Defendants.)

12
 13
 14
 15 VIDEOTAPED DEPOSITION OF TERRY PEACH,
 16 before the undersigned Certified Shorthand Reporter,
 17 taken on behalf of the Defendants, at the Attorney
 General, 313 Northeast 21st Street, Oklahoma City,
 18 Oklahoma, commencing at 9:06 a.m., on April 10, 2009,
 19 pursuant to the stipulations of the parties.
 20

21 _____
 NICHOLE M. MYERS, RPR, CSR #1704

22
 23 NICHOLS McCLANAHAN REPORTING
 Two Main Plaza
 24 616 South Main, Suite 302
 Tulsa, Oklahoma 74119-1261
 25 (918) 585-9969 * * * FAX (918) 585-9955

NICHOLS McCLANAHAN REPORTING
918-585-9969

TERRY PEACH 4/10/2009

2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ATTORNEY FOR THE PLAINTIFF:

MR. TREVOR HAMMONS
MR. DANIEL LENNINGTON
Assistant Attorney General
313 Northeast 21st Street
Oklahoma City, Oklahoma 73105

ATTORNEY FOR ODAFF:

MR. LARRY H. HARDEN
MS. TEENA G. GUNTER
Post Office Box 528804
Oklahoma City, Oklahoma 73152

ATTORNEY FOR TYSON FOODS, INC.:

MR. ROBERT GEORGE
Senior Counsel, Legal Department
2210 West Oaklawn Drive
Springdale, Arkansas 72762

ATTORNEY FOR CARGILL:

MR. JOHN TUCKER
Rhodes, Hieronymus, Jones,
Tucker & Gable
100 West 5th Street, Suite 400
Tulsa, Oklahoma 74103-4287

ATTORNEY FOR SIMMONS FOODS:

MR. BRUCE WAYNE FREEMAN
Conner & Winters
4000 One Williams Center
Tulsa, Oklahoma 74172-0148

ATTORNEY FOR PETERSON FARMS:

MR. PHILIP HIXON
McDaniel, Hixon, Longwell & Acord
320 South Boston Avenue, Suite 700
Tulsa, Oklahoma 74103

TERRY PEACH 4/10/2009

3

1 ATTORNEY FOR GEORGE'S:

2 MS. K. C. DUPPS TUCKER
3 Bassett Law Firm
4 221 North College
5 Fayetteville, Arkansas 72701

6 ATTORNEY FOR CAL-MAINE:

7 MR. ROBERT SANDERS
8 Young Williams
9 2000 AmSouth Plaza
10 Post Office Box 23059
11 Jackson, Mississippi 39225

12 VIDEOGRAPHER:

13 MR. DAVID FARLEY
14 BALLARD VIDEO PRODUCTIONS, INC.
15

16 S T I P U L A T I O N S

17 It is hereby stipulated and agreed by and among
18 the parties hereto that the deposition is being taken
19 pursuant to agreement of the parties.

20 It is further stipulated by and among the parties
21 hereto that all objections, except as to the form of
22 the question, are to be reserved until the time of
23 trial.
24
25

TERRY PEACH 4/10/2009

5

TRANSCRIPT OF PROCEEDINGS

VIDEOGRAPHER: We're on the record.

TERRY PEACH,

after having been duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SANDERS:

Q. Mr. Peach, my name is Bob Sanders. I represent the Cal-Maine Defendants in this lawsuit, and I'm going to be the first one to ask you questions this morning. Will you tell us your name and what you do for a living, please.

A. Yes. Terry Peach and I'm the Oklahoma Secretary and Commissioner of Agriculture.

Q. Can you tell me just briefly what your work background is?

A. Yes, sir. I attended school at Oklahoma State University. From there went to teach vocational agriculture in Oklahoma Public School system. Moved back to Northwest Oklahoma and our family farm and ranching operation. Worked there in the oil field business until about 1993. Served from '93 to 2000 as the FSA State Director for USDA. Went back to the farm and ranch for two years and then

TERRY PEACH 4/10/2009

37

1 the -- your authorized agents actually do go onto the
2 premises of any of these facilities?

3 A. No, sir, I wouldn't have any idea. You'd
4 have to talk to Dr. -- Mr. Parrish.

5 Q. Do you have any idea what they might look
6 for when they do make such an inspection?

7 A. You'd have to talk to Mr. Parrish.

8 Q. If you would then turn over to the very
9 next page. This -- you should be looking at 10-9.11.
10 Do you see that?

11 A. Yes, sir.

12 Q. If you would, just take a second and read
13 part A1, 2, and B1(b).

14 A. Oh, Okay.

15 Q. All right. This statute provides for
16 penalties for violating the Oklahoma Registered
17 Poultry Feeding Operations Act; is that correct?

18 A. Yes, sir.

19 Q. And in the very first sentence, A1, it
20 says Any person violating the provision are subject
21 to the sanctions listed below. Do you see that?

22 A. Yes, sir.

23 Q. It doesn't say any -- it doesn't say
24 anything about an industry group being liable for any
25 sanctions, does it?

TERRY PEACH 4/10/2009

38

1 MR. HAMMONS: Object to the form.

2 A. No, it does not.

3 Q. (By Mr. Sanders) I mean there's no
4 provision in here for any sort of collective
5 punishment of an entire industry, is there?

6 MR. HAMMONS: Object to the form. Calls
7 for a legal conclusion.

8 A. No, there is not.

9 Q. (By Mr. Sanders) Do you know if the
10 Department of Oklahoma -- the Department -- that
11 ODAFF has ever attempted to prosecute any industry
12 grouping of -- of companies under this statute?

13 MR. HAMMONS: Object to the form.

14 A. That would be a question that you would
15 have to ask Mr. Parrish, but there are company-owned
16 farms that might -- an individual farm might have a
17 penalty, yes, sir.

18 Q. (By Mr. Sanders) Oh, I understand.

19 Let me ask you do you know if any --
20 first, do you know whether or not ODAFF has
21 prosecuted persons under this statute?

22 A. No, I do not know.

23 Q. Okay. Is that something -- would you know
24 if it occurred?

25 MR. HAMMONS: Object to the form.

TERRY PEACH 4/10/2009

39

1 Q. (By Mr. Sanders) Again I'm asking only
2 from the time that you've been there.

3 A. I would likely know from the time I've
4 been there, yes, sir, and I don't recall of any.

5 Q. Let me get you -- I missed one when I was
6 going through. If you could turn back -- I think
7 it's Statute 10-9.8a. That's the one you were on a
8 minute ago.

9 A. 9.8a you said?

10 Q. Yes, sir. Do you see that?

11 A. Well, obviously I haven't yet. Okay.

12 Q. Now this -- take a minute and just look at
13 this statute if you would.

14 A. Okay.

15 Q. All right. This -- this section provides
16 some restrictions on the registration of new or
17 expanding poultry feeding operations; is that
18 correct?

19 A. Yes, sir.

20 Q. It contains such things as a -- shall not
21 be constructed in a 100 year flood plain. If you
22 look down at part 2b it says or within one mile of
23 any designated scenic river; is that correct?

24 A. Yes, sir, it has various setbacks in it.

25 Q. That's correct.

TERRY PEACH 4/10/2009

45

1 **Q.** All right. Now, if you would, turn over
2 to the -- to the very next page. And in the second
3 column towards the top there's a heading that says
4 "organic nutrient application rates." Do you see
5 that?

6 **A.** Yes, sir.

7 **Q.** And do you know if chicken litter is
8 considered an organic fertilizer?

9 MR. HAMMONS: Object to the form.

10 **A.** Yes, I believe that it is.

11 **Q.** (By Mr. Sanders) All right. Then below
12 that you'll see two headings for nitrogen application
13 and phosphorus application. Do you see that?

14 **A.** Yes, sir.

15 **Q.** And the first one for nitrogen application
16 says the amount of nitrogen applied for manure will
17 not exceed the animal -- the annual crop requirement
18 for nitrogen. Do you see that?

19 **A.** Yes, sir.

20 **Q.** All right. And down below that's for the
21 phosphorus application it says that the maximum
22 planned rates of phosphorus application shall be
23 determined using the Oklahoma phosphorus worksheet.
24 Do you see that?

25 **A.** Yes, sir.

TERRY PEACH 4/10/2009

75

1 **A.** Yes, sir.

2 **Q.** Do you consider farmers to generally be
3 law-abiding people?

4 **A.** Yes.

5 MR. HAMMONS: Object to the form.

6 **A.** Yes, sir.

7 **Q.** (By Mr. Sanders) And so far as you know
8 do farmers, at least the ones that you have contact
9 with or know of, do they generally obey the laws and
10 obey the regulation promulgated by ODAFF?

11 MR. HAMMONS: Object to the form.

12 **A.** Yes, sir.

13 **Q.** (By Mr. Sanders) Do you believe that
14 farmers are generally concerned with the environment?

15 MR. HAMMONS: Object to the form.

16 **A.** Yes, sir, they're very concerned.

17 **Q.** (By Mr. Sanders) All right. Are you
18 aware of any violations of Oklahoma law or ODAFF
19 regulations by any of the Defendants in this lawsuit?
20 And let me tell you who they are. It's a Tyson group
21 that includes Cobb-Vantress, Cargill, Inc. and
22 Cargill Turkey Production, Cal-Maine Foods, Inc. and
23 Cal-Maine Farms, Inc., Peterson Farms, Inc.,
24 George's, Inc. and George's Farms, Inc., Simmons
25 Food, Inc., and Willow Brook Farms, Inc. Are you

TERRY PEACH 4/10/2009

76

1 aware that any of those Defendants have violated any
2 Oklahoma law or ODAFF regulations in the IRW?

3 MR. HAMMONS: Object to the form.

4 A. I'd have to refer that question to Dan
5 Parrish, the director of that division, because there
6 may be violations that I'm unaware of.

7 Q. (By Mr. Sanders) All right. But as you
8 sit here today you're not aware of any violations by
9 any of those Defendants in the IRW?

10 A. No.

11 Q. It's correct, isn't it, that there are
12 lots of different sources of or potential sources of
13 nutrients in the -- in the water?

14 MR. HAMMONS: Object to the form.

15 A. In the water or in the Illinois River
16 watershed? What's your question?

17 Q. (By Mr. Sanders) In the waters of the
18 Illinois River watershed.

19 A. Yes, there are many potential sources.

20 Q. And it's -- you can't really address water
21 quality without addressing all the potential sources
22 of contribute -- or contributors of nutrients, can
23 you?

24 MR. HAMMONS: Object to the form.

25 A. We at the Department of Agriculture -- I

TERRY PEACH 4/10/2009

79

1 in that; is that correct?

2 A. Yes.

3 Q. Let me ask you about the Oklahoma
4 Conservation Commission. Are you -- are you aware
5 that the state of Oklahoma pays people through the
6 Oklahoma Conservation Commission to teach people how
7 to use litter, how to apply litter and use litter in
8 the IRW?

9 A. Yes, sir.

10 MR. HAMMONS: Object to the form.

11 Q. (By Mr. Sanders) Is it odd to you that
12 the state of Oklahoma on the one hand pays employees
13 to teach people how to use litter in the IRW and on
14 the other hand the state of Oklahoma is suing to
15 prevent the use of litter in the IRW?

16 MR. HAMMONS: Object to the form.

17 Q. (By Mr. Sanders) Does that seem odd to
18 you?

19 A. Yes, sir.

20 Q. You know also that there are point sources
21 of nutrients and bacteria for that matter in the IRW;
22 is that correct?

23 A. Restate the question.

24 Q. Do you understand that there are point
25 sources that -- like municipal wastewater treatment

TERRY PEACH 4/10/2009

90

1 MR. HAMMONS: Object to the form.

2 A. Yes.

3 Q. (By Mr. Sanders) Do you know if the
4 Attorney General or any other state prosecutor has
5 ever prosecuted anyone for applying litter in the
6 IRW?

7 A. I can't answer -- I don't know the answer.

8 Q. Just to your knowledge.

9 A. I don't know the answer to that question,
10 no.

11 Q. But you don't know?

12 A. Not to my knowledge.

13 Q. When did you learn that you were on the
14 State's witness list in this case?

15 A. I guess about two weeks ago.

16 Q. All right. Who told you?

17 A. Larry Harden.

18 Q. Has anybody talked to you about your
19 expected testimony?

20 A. No.

21 Q. Have you seen any sort of outline of what
22 you might be expected to testify about?

23 A. Not at all, no.

24 Q. If you are called to testify, you'll
25 testify -- well, will you testify that ODAFF has

TERRY PEACH 4/10/2009

92

1 **A.** Yes.

2 **Q.** (By Mr. Sanders) And if asked you will
3 testify that ODAFF does not believe it ought to be
4 stopped; is that correct?

5 MR. HAMMONS: Object to the form. Sorry.

6 **A.** Restate that.

7 **Q.** (By Mr. Sanders) If you are asked will
8 you testify that ODAFF does not believe that all
9 litter application in the IRW should be stopped?

10 MR. HAMMONS: Object to the form.

11 **A.** Yes.

12 **Q.** (By Mr. Sanders) And if asked you'll
13 testify that ODAFF has chosen not to stop litter
14 application in the IRW?

15 MR. HAMMONS: Object to the form.

16 **A.** Yes.

17 **Q.** (By Mr. Sanders) And if you are asked
18 you'll testify that litter application in the IRW is
19 legal when done in compliance with the requirements
20 of the Oklahoma Registered Poultry Feeding Act, the
21 individual's animal waste -- animal waste management
22 practice acts and Code 590?

23 MR. HAMMONS: Object to the form.

24 Compound question.

25 **Q.** (By Mr. Sanders) Let me ask you this. If

TERRY PEACH 4/10/2009

93

1 you are asked, will you testify that litter
2 application in the IRW is legal when done in
3 compliance with state law and applicable state
4 regulations?

5 MR. HAMMONS: Object to the form.

6 A. Yes, sir.

7 Q. (By Mr. Sanders) And if asked you will
8 testify that ODAFF has never asked the Legislature to
9 ban litter usage in the IRW?

10 A. Yes, sir.

11 Q. And if asked you will testify that you're
12 not aware of any agency, either state or federal,
13 which has called for a litter ban in the IRW?

14 MR. HAMMONS: Object to the form.

15 A. Yes, sir. And again, I'd refer that to
16 Dan Parrish, the director of that division.

17 Q. (By Mr. Sanders) All right. But so far
18 as you know as you sit here now you would answer yes
19 to that?

20 A. Yes.

21 Q. And if asked you will testify that ODAFF
22 can convert a dry litter operation to a CAFO
23 operation if ODAFF determines that the operation is a
24 significant contributor of pollution to the waters of
25 the state?

TERRY PEACH 4/10/2009

95

1 **A.** Yes.

2 **Q.** And if asked you'll testify that ODAFF
3 does not consider chicken litter to be a hazardous
4 substance?

5 **A.** Yes.

6 MR. HAMMONS: Object to the form.

7 **Q.** (By Mr. Sanders) And if asked you'll
8 testify that ODAFF does not consider that the
9 Illinois River watershed itself or pastures which
10 have received chicken litter or turkey litter should
11 be considered superfund sites?

12 MR. HAMMONS: Object to the form.

13 **A.** Yes, sir.

14 **Q.** (By Mr. Sanders) And if asked you'll
15 testify there are multiple sources of nonpoint
16 nutrient contributions?

17 **A.** I'll say that there are potential.

18 **Q.** Multiple potential sources?

19 **A.** Yes, sir.

20 **Q.** All right. And if asked you'll testify
21 that farmers in the IRW are generally -- generally
22 obey applicable statutes and regulations?

23 **A.** Yes, sir.

24 MR. HAMMONS: Object to the form.

25 **Q.** (By Mr. Sanders) And if asked you'll

TERRY PEACH 4/10/2009

96

1 testify that the farmers in the IRW generally are
2 concerned with the environment?

3 A. Yes, sir.

4 Q. If asked you will testify that you are not
5 aware of any violation of any Oklahoma law or
6 regulation by any Defendant in this proceeding in the
7 IRW?

8 MR. HAMMONS: Object to the form. All
9 these have been asked and answered before.

10 A. Yes, I'm not aware of any. But again, you
11 need to ask Dan Parrish for that direct answer.

12 MR. SANDERS: All right. Because of the
13 time constraints that we have, I'm going to pass the
14 witness at this point. But if we reconvene, I do
15 have other questions I'd like to ask.

16 MR. HAMMONS: Okay.

17 MS. TUCKER: Do you need to take a break?

18 A. No, I'm fine. We're through with 6 and 2?

19 CROSS-EXAMINATION

20 BY MS. TUCKER:

21 Q. Secretary Peach, I'm K. C. Tucker, and I
22 represent -- oh, sorry. I represent the George's
23 Defendants in this matter. I think earlier you said
24 that you had either been on a phone call or in a
25 meeting with some of the State's retained experts in

TERRY PEACH 4/10/2009

114

1 A. They're very similar under the direction
2 of the Governor.

3 Q. Exhibit 6 I believe that you --
4 Mr. Sanders had asked you questions earlier about
5 2-18.1 subparagraph C. Can you look at paragraph B
6 in that same section, and if you'd go ahead and read
7 that into the record for us. If you could read
8 aloud.

9 A. Okay. Let me read it to myself first.

10 Q. Okay.

11 A. Okay. You're talking about B, the entire
12 thing?

13 Q. B, correct.

14 A. Okay. "If the State Board of Agriculture
15 finds that any of the air, land or waters of the
16 state, which are subject to the jurisdiction of the
17 Oklahoma Department of Agriculture, Food and Forestry
18 pursuant to the Oklahoma Environmental Quality Act
19 have been or are being polluted, the Board shall make
20 an order requiring that the pollution ceases within a
21 time period determined by the Department, or require
22 a manner of treatment or the disposal of waste or
23 other polluting materials as may in the judgement of
24 the Board be necessary to prevent the further
25 pollution. In addition, the Board may assess an

TERRY PEACH 4/10/2009

115

1 administrative penalty persistent to Section 2-18 of
2 the title. The person to whom the order is directed
3 shall fully comply with the order of the Board and
4 pay a fine and other costs assessed."

5 Q. Has there been any finding under that
6 particular section of any pollution to the waters in
7 the Illinois River watershed --

8 MR. HAMMONS: Object to the form.

9 Q. (By Mr. Hixon) -- of any Defendant in
10 this case?

11 MR. HAMMONS: Object to the form.

12 A. I can't specifically answer that question.
13 That's a question you have to ask Mr. Dan Parrish.

14 Q. (By Mr. Hixon) Okay. What is your
15 relationship as the Commissioner and Secretary of
16 Agriculture to the State Board of Agriculture?

17 A. I'm the president of the Board.

18 Q. And what is Mr. Parrish's relationship to
19 the State Board of Agriculture?

20 A. He's the director of the Agricultural
21 Environmental Management Services Division which
22 oversees CAFO, large animal feeding operations, and
23 poultry act.

24 Q. Okay. That -- it's my understanding that
25 that's part of the Department of Agriculture; --

TERRY PEACH 4/10/2009

116

1 **A.** Yes, sir.

2 **Q.** -- is that correct? State Board of
3 Agriculture is a separate body?

4 **A.** Is the governing board.

5 **Q.** This -- as I understood that section that
6 is a responsibility of the State Board of
7 Agriculture?

8 **A.** Yes.

9 **Q.** Okay. Does Mr. Parrish hold a position on
10 the State Board of Agriculture?

11 **A.** No, he does not. He's the director. But
12 he's the one that can say has there ever been one.

13 **Q.** Do you --

14 **A.** My tenure is only from March of 2003 to
15 present.

16 **Q.** Okay. During your tenure has there been
17 any action taken against any poultry operation under
18 that Section B that you just read?

19 MR. HAMMONS: Object to the form.

20 **A.** Are we talking about any one poultry
21 grower?

22 **Q.** (By Mr. Hixon) I'm talking about against
23 any one poultry grower or anyone else.

24 **A.** Without reviewing the file I could not
25 answer that question.

TERRY PEACH 4/10/2009

117

1 **Q.** Okay. Has there been any finding of any
2 pollution against the poultry industry under that
3 particular section?

4 MR. HAMMONS: Object to the form.

5 **A.** The industry?

6 **Q.** (By Mr. Hixon) The industry.

7 **A.** No.

8 **Q.** Would that section give you jurisdiction
9 to make that determination against the industry?

10 MR. HAMMONS: Object to the form.

11 **A.** No, our jurisdiction would be over the
12 growers.

13 **Q.** (By Mr. Hixon) So, for example, my
14 client, Peterson Farms, who no longer has any kind of
15 contract poultry growing operations in the Illinois
16 River watershed, you would have no jurisdiction over
17 Peterson Farms under that particular --

18 **A.** Where they do not own production
19 facilities, no.

20 **Q.** And if Peterson Farms did have a contract
21 grower in the Illinois River watershed and there was
22 a finding of a violation of that provision who -- who
23 would ODAFF take action against?

24 **A.** We would regulate the grower.

25 **Q.** The grower. Okay. Has the state of

TERRY PEACH 4/10/2009

120

1 (Defendant's Exhibit No. 7 was identified.)

2 Q. (By Mr. Hixon) I'm going to hand you
3 what's been marked as Exhibit 7 to your deposition.
4 I represent that this is a page out of the first
5 amended complaint filed by the state of Oklahoma
6 against the Defendants in this case. Have you
7 reviewed the first amended complaint?

8 A. No, sir.

9 Q. Okay. If you would, please look at
10 paragraph 131.

11 A. Okay.

12 Q. I'll read that into the record for you.
13 It says, "Additionally the poultry integrator
14 defendants are subject to the jurisdiction of the
15 Oklahoma Department of Agriculture, Food and Forestry
16 pursuant to Oklahoma Environmental Quality Act and by
17 and through their wrongful poultry waste
18 disposable -- pardon me -- poultry waste disposal
19 practices have caused pollution of the land and
20 waters within the IRW in Oklahoma. Each instance of
21 this conduct constitutes a violation of two Oklahoma
22 Stats Section 2-18-1." Section 2-18.1 is this
23 Exhibit 6. Would you agree with that?

24 A. Yes, I would.

25 Q. And would you agree with the allegation in

TERRY PEACH 4/10/2009

121

1 this paragraph of the first amended complaint that
2 ODAFF has jurisdiction over the poultry integrator
3 Defendants?

4 MR. HAMMONS: Object to the form.

5 A. The Defendants being whom?

6 Q. (By Mr. Hixon) The Defendants were
7 parties that Mr. Sanders has read to you earlier. I
8 may not get an exhaustive list, but they're Tyson
9 Defendants, the Cargill Defendants, George's
10 Defendants, Simmons Foods, Peterson Foods -- pardon
11 me, Peterson Farms, Willow Brook.

12 A. Yes.

13 Q. Okay.

14 A. Yes, I would agree with that.

15 Q. Okay. That ODAFF --

16 A. The Department of Agriculture has
17 jurisdiction.

18 Q. Has jurisdiction over those poultry
19 integrators?

20 A. No, the growers.

21 MR. HAMMONS: Object to the form.

22 A. The growers.

23 Q. (By Mr. Hixon) Okay. Has jurisdiction
24 over the growers?

25 A. The farms. The actual farms.

TERRY PEACH 4/10/2009

122

1 Q. You understand that this lawsuit was not
2 brought against the individual poultry growers?

3 A. Yes, sir.

4 Q. Does ODAFF have jurisdiction over the
5 Defendants, those poultry integrators?

6 MR. HAMMONS: Object to the form.

7 A. It is my understanding, no, we have
8 jurisdiction over the growers unless the Defendants
9 have farms of their own.

10 Q. (By Mr. Hixon) So ODAFF may have
11 jurisdiction over an integrator if the integrator has
12 a -- is that a company-owned farm?

13 A. Yes, sir.

14 Q. But that would -- would there be any other
15 exceptions to ODAFF's jurisdiction?

16 MR. HAMMONS: Object to the form.

17 A. There may be other areas, but not to my
18 knowledge.

19 Q. (By Mr. Hixon) Okay. The question that I
20 asked earlier about the state of Oklahoma requesting
21 you to undertake an investigation pursuant to
22 subparagraph B of Exhibit 6, this allegation in
23 paragraph 131 says that these acts by the poultry
24 integrators are in violation of that Section 2-18.1.
25 Has the state of Oklahoma asked the Department of

TERRY PEACH 4/10/2009

126

1 your farming practices and what crops you grow.

2 Q. Well, for example, you have wheat out
3 there. And after you cut your wheat crop what do you
4 do with it?

5 A. Work the ground.

6 Q. And that means you work in the organic
7 matter that's left over after the wheat's harvested?

8 A. Yes, sir.

9 Q. So that's giving back to the soil, isn't
10 it?

11 A. Yes, sir.

12 Q. And the same with your pasture, do you
13 burn your pasture every year?

14 A. No.

15 Q. Do you ever burn your pasture?

16 A. No.

17 Q. So the grass that doesn't come back the
18 next year and that which gets on the ground it
19 decomposes and that's giving back to the soil too,
20 isn't it?

21 A. Yes, sir.

22 Q. When you apply poultry litter you're not
23 just applying nitrogen and phosphorus and other major
24 nutrients, are you, sir?

25 A. No.

TERRY PEACH 4/10/2009

127

1 **Q.** What else are you applying to your soil?

2 **A.** You're applying nutrients, humus and also
3 soil bacteria.

4 **Q.** Does chemical fertilizer do that for the
5 soil?

6 **A.** No, sir.

7 **Q.** Are those things that you're adding back
8 to the soil healthy for the soil?

9 MR. HAMMONS: Object to the form.

10 **A.** They're if you're careful with the amount
11 of ingredients that you apply back and you apply
12 those ingredients back based on soil analysis.

13 **Q.** (By Mr. Tucker) My grandfather was a
14 gentleman farmer, or so he saw himself, out by Lake
15 Overholser here in Oklahoma City. Faircroft Farm was
16 his place. He grew alfalfa. And Oklahoma State came
17 down and talked to him about 1950 and said,
18 "Mr. Johnston, if you'll add some nitrogen at this
19 rate to your fertilizer -- to your alfalfa, you'll
20 get a lot better crop. You'll get probably double
21 the crop you've got now. You can probably get two
22 cuttings instead of one." And so my grandfather
23 being no fool figured that if that much was good, if
24 he put on twice as much, he'd get four times as much
25 alfalfa. That didn't work for him. He lost all his

TERRY PEACH 4/10/2009

128

1 alfalfa.

2 Is that kind of what you're talking about?

3 A. Yes, sir.

4 Q. Is that one of the things that a farmer
5 can benefit from by following a nutrient management
6 plan prepared under the auspices of ODAFF?

7 A. Yes, sir.

8 MR. HAMMONS: Object to the form.

9 A. Yes, sir.

10 Q. (By Mr. Tucker) One of the things that
11 ODAFF does when they instruct farmers on the proper
12 use of organic fertilizers or litter and how to apply
13 it is they put on a slide show for them or a Power
14 Point. Have you seen that Power Point?

15 A. No, sir, I haven't.

16 Q. Well, let me tell you one of the -- one of
17 the training videos -- you know there is a training
18 video though?

19 A. Yes, sir.

20 Q. One of the presentations in the training
21 video, and I'll quote from it, "your AWMP" -- and you
22 know what an AWMP is?

23 A. Yes.

24 Q. What is an AWMP by the way?

25 A. It's a waste management plan.

TERRY PEACH 4/10/2009

136

1 Q. And what kind of soil testing do they do?
2 I mean what are they testing for?

3 A. M, P and K and trace elements.

4 Q. And is that solely for your-all's
5 management purposes or does that get reported to some
6 agency at the state?

7 A. It's for our management purposes.

8 Q. Okay. So it's not being reported out
9 really?

10 A. No.

11 Q. You had said earlier, I mean a lot
12 earlier, that you wouldn't mind using poultry litter
13 if it was, you know, available and at a decent price?

14 A. And cost effective.

15 Q. Yeah, because you guys are out west.

16 A. Yes.

17 Q. Have you seen any reports or studies on
18 whether poultry litter is considered to be effective
19 for wheat growing?

20 A. Yes.

21 Q. And what's the general tenor of what
22 you've seen?

23 A. It is effective.

24 Q. If litter was available, would you be
25 using it for the wheat or for the pastures or for

TERRY PEACH 4/10/2009

137

1 both?

2 A. For both.

3 Q. Have you seen any reports that indicate
4 whether or not poultry litter is good for pasture?

5 A. Yes, or I wouldn't use it.

6 Q. Okay. So --

7 A. I just answered that.

8 Q. Okay. All right. So -- so good?

9 A. Yes.

10 Q. All right. Okay. Before you became the
11 head of ODAFF --

12 A. Yes.

13 Q. -- and the Secretary of Agriculture did
14 you know folks who raised cattle over in the IRW?
15 Professionally, socially, whatever.

16 A. I specifically wouldn't know what
17 watershed they lived in, no.

18 Q. Okay. Have you gotten any general
19 impression whether or not the use of poultry litter
20 has improved pasture range over in that part of the
21 state?

22 MR. HAMMONS: Object to the form.

23 A. Yes, it has very much improved range
24 conditions in that watershed.

25 Q. (By Mr. Freeman) Is there any special